MISCELLANY.

NEW RULE ENTERED BY THE COURT OF APPEALS.—The Virginia Court of Appeals has amended its rules by the addition of the following:

"Applications addressed to this court for the issue of writs other than the writ of *habeas corpus*, by virtue of its original jurisdiction, will be placed upon the regular docket as they mature, and be heard when reached upon the regular call thereof; subject, however, to be advanced for good cause shown in accordance with Rule VI. The records shall be printed as in other cases, and must be submitted upon printed briefs, unless the court shall otherwise direct."

JUDICIAL ROBES.—The *New York Law Journal* says editorially: "It is rumored that the Special and Trial Term Justices of the Supreme Court will follow the example of the members of the Appellate Division and wear robes on the bench, beginning with the January terms of 1899. We have on a previous occasion advocated this step and hope the report, which has come to us informally, is true. As a mere matter of sentiment and decent ceremony, it seems proper for judges, when actually officiating, to wear the uniform which is hallowed by the custom and associations of centuries. There is no point in the suggestion that mere Anglomania is the motive of the reassumption of gowns, or the sneer that wigs will follow in time. The wigs worn by British judges and barristers are hideous, brain-frying contrivances; the conventional gown, on the other hand, is graceful as well as dignified, and is, moreover, a perfectly convenient and not uncomfortable garment. As far as the appellate courts are concerned, we believe the prevailing sentiment of the bar of this city favors the retention of judicial robes. And, as we pointed out in our former article, there would be even more practical utility in the wearing of robes at special and trial terms than in the higher courts. It is in the latter branches, where witnesses are cross-examined and strong denunciation indulged in by counsel, that angry passions most frequently rise, and breaches of decorum, and even of the peace, are imminent. The judicial costume, sanctioned by historical usage, cannot fail to exert an influence upon counsel, parties and witnesses. Ceremonial appeals to the imagination certainly have considerable effect upon the average man, and this particular ceremonial observance is a legitimate one for fostering respect for courts as institutions.

"We cannot see how serious objection can be made to the idea of a judicial uniform *per se*, as distinctive professional costumes are required to be worn by persons following so many different callings. The objection generally made simmers down to a fear that a distinctive dress will tend to inspire judges with an undue sense of their own importance—to foster personal arrogance and vanity. We do not think there is anything in this criticism. Many members of the bar unfortunately are able to cite instances of arbitrary and discourteous action on the part of judges who never wore a robe, and, on the other hand, is not our begowned Court of Appeals commended by the bar throughout the State for its uniform patience and kindly, considerate treatment? As far as the judge himself is concerned, a robe of office serves, just as his gavel does, as a perpetual reminder that 'when he sits in place' he is, so to speak, not a man, but an institution. In

so far as these external insignia impress him with a sense of his public character, they tend to emphasize the duty of dignified and courteous treatment of the bar and litigants in like manner as his other more serious official obligations."

We have heretofore expressed our hearty sympathy with the movement towards requiring judges to adopt the robe. 3 Va. Law Reg. 680. See also 4 Va. Law Reg. 477.

At the last meeting of the Virginia State Bar Association a resolution was offered by E. C. Massie, of Richmond, recommending that the judges of the Supreme Court of Appeals and of the circuit, corporation and chancery courts adopt suitable judicial robes for use upon the bench. The proposition elicited much discussion and much opposition. One member moved to amend "by inserting a provision for a King, too, while we are going back." Another moved to include justices of the peace among the robed. But, notwithstanding this effort to strangle the motion by ridicule, it was strongly advocated by Mr. Massie, the mover of the resolution; Robert M. Hughes, of Norfolk, and Arthur S. Segar, of Hampton. The resolution was finally amended by confining the recommendation to the judges of the Court of Appeals, and was then carried by a vote of 37 to 26. We hope our Bar Association will continue to agitate the matter until it is a fact accomplished. It may be wiser to make a concentrated effort first toward the robing the Supreme Court judges. Afterwards, when ultra-democratic lawyers have become accustomed to the innovation, and convinced of its propriety and value, the custom may be extended to include the judges of the inferior courts of record.

We shall be glad to publish brief communications on the subject from the members of the bar.

THE SLEEPING SOW—DUTIES OWED HER BY A RAILROAD COMPANY.—We are indebted to Albert Fink, Esq., of the Memphis bar, for a copy of the subjoined brief, filed in the Supreme Court of Arkansas, by Messrs. Rose, Hemingway & Rose, counsel for the appellant, in the case of *Rudolph Fink, Rec'r*, v. *Nelson*. The suit was against the receiver of a railroad company, to recover damages for killing a sow which was asleep under a car on the siding, into which the engine backed. The lower court found for the plaintiff. This brief secured a reversal:

"We have ascertained by experience that stock killing cases are for some reason not favorites with this tribunal, and we do not often force them upon its attention; but the present one is so important that we are compelled to urge its consideration upon the court.

"The questions are these: (1), Must a railroad, before starting its train, send its servants to look carefully under all the cars to ascertain whether a sow is taking her luxurious *siesta* beneath their tempting shade? (2), Is it negligence *per se* for a railroad train to cast a shadow, and thereby tempt a sow to seek repose at a time when the company knows that the fiery rays of day's luminary will make her think of sweet slumber under the impenetrable shelter of an opaque body? (3), If a railroad company lets a sow eat so much of its cotton seed that she is overcome by somnolence, is it the company's duty to guide her to a spot where her slumbers may be safe and undisturbed?

"These questions have given us great concern, for we are accustomed to ap-

proach the seat of justice armed with authorities, if not with authority, but we confess that after searching from the first Year Book to 170 U. S., we have not found a case in point. The questions are entirely new, and their solution gives the court one of those opportunities to distinguish itself by originality that are now so rare in the well-trodden fields of the law.

"Upon the first proposition we must appeal to the experience of the court and the universal practice of mankind. Before the starting of a train did your honors ever see the brakemen running about peering under the cars looking for drowsy swine? Have you ever seen brakemen armed with poles to awaken sows from their slumbers? There is no animal that sleeps more soundly—none which Morpheus enfolds more tightly in his embrace, a circumstance that gives some people a poor opinion of the taste of that deity. But *de gustibus non disputandum*, and Morpheus loves the hog as Bacchus wine.

"Now, the measure of diligence exacted of a railroad is that displayed by an ordinarily prudent man in the conduct of that business, and as no railroad in the world has its brakemen look under the cars for sleeping hogs, we respectfully submit that no such duty is incumbent on this receiver. The Spaniards call us hogs, and we have shown a marked partiality for that amiable animal; but it does not extend to the point of establishing a guardianship of their slumbers.

"Our Look Out Statute (Acts 1891, p. 213) only requires a railroad when running to keep a look out for stock getting on its track. It says nothing about chunking hogs from under the cars before they are put in motion.

"If there is any liability in this case it is on the second ground, and our defence must be the impossibility of what is exacted of us. Cars will cast a shadow, and the hog, who was a Sybarite long before Sybaris was founded, dearly loves the shade. We have all heard of Peter Schlemil, who sold his shadow to the devil for an inexhaustible purse of gold; but we have no communion with the devil, and our cars will, therefore, have to cast shadows as long as the sun shines, and as long as the hog survives in a world so fitted to his nature that he is likely to be its last inhabitant, he or she will seek the shade.

"Upon the third question, it is true that this court has decided that animals must not be tempted to their death; and if this sow had met her fate while partaking of the cotton seed, a difficult question would be presented. But she did not. There is no evidence that she ever saw the cotton seed or partook of it. The seed were at the cotton shed fifteen feet away, but she may have approached from the other direction, and have 'fallen on sleep' before getting there. Upon this point there was absolutely no evidence. Hogs, like people, sometime sleep best on an empty stomach; and even in Arkansas they sometimes get something to eat off a railroad's right of way; so there can be no legitimate presumption that this unhappy sow's fatal slumbers were produced by indulgence in the tempting viands of appellant.

"We, therefore, respectfully submit that in this particular stock-killing case the judgment must be reversed."

Questions Propounded on the Bar Examination at Richmond, January 6, 1899.

1. How may license to practice law in the courts of this State be obtained? State fully the various steps required.

2. What is municipal law? What constitutes the municipal law in force in this commonwealth; from what source derived, and where found?

3. How many kinds of courts exercise jurisdiction in this State? State generally of what each has jurisdiction.

4. What are the essential elements of a contract? What kind of a contract is an option?

5. What are the essential requisites of a deed? What is the characteristic of a "deed indented"? "of a deed poll"?

6. In how many ways can title to land be acquired?

7. What is the usual covenant for title in this State, and what are the objections to it?

8. If a grantee loses his land by reason of superior title, what is the measure of his recovery under a covenant of general warranty? What under a covenant of special warranty?

9. What is a corporation? How are private corporations created in this State? How dissolved?

10. Upon whom must process commencing a suit against a corporation be executed, and what must the return of the officer show?

11. A corporation in 1890 sold and conveyed a parcel of land to B, acknowledged the deed for recordation before a notary who was a stockholder in the corporation. The deed was immediately spread upon the record in the clerk's office of the county in which the land was situated. Afterwards, and in the same year, C recovered a judgment against the corporation. Subsequently the General Assembly passed an act declaring that such acknowledgment whether theretofore or thereafter taken should not be held invalid, and that the record of a deed upon such acknowledgment should in all respect be valid. The corporation has no assets out of which C can make his judgment. Can the land sold and conveyed to B be subjected to its payment? Give reasons for your answer.

12. When have the creditors of an insolvent corporation the right to proceed against its stockholders to compel payment of their debts, and to what extent are the stockholders liable in such suit?

13. What is a will? How executed; how revoked?

14. What property can married women and infants dispose of by will? What is the technical meaning of the words "devise" and "bequest?"

15. Define curtesy and dower, and state in what respects they differ.

16. A husband purchases and takes possession of two tracts of land, pays three-fourths of the purchase price of each, takes bonds for conveyances when the whole of the purchase price shall have been paid. During the coverture he sells and conveys one tract, his wife not uniting in the deed, and dies in possession of the other tract, his wife surviving him. What dower right, if any, has his widow in the lands? Give reason for your answer.

17. What are the actions for recovering possession of lands in this State?

When does each lie? What is the proceeding for commencing each and what pleas may be filed?

18. When and in what courts may the lands of infants be sold for re-investment? State who must be complainant, who defendants; what allegations the bill must contain; who must answer, and how?

19. A executes a deed of trust on his land to secure the payment of a debt due B. Afterwards A sells and conveys a portion of same land to C and subsequently conveys another portion of it to D. Before purchasing D gets B to release that portion of the land purchased by him (D) from the lien of the deed of trust. All the deeds were properly recorded. The proceeds of the residue of the trust lands are not sufficient to pay B's debt. Can B enforce his deed of trust upon the lands purchased by C, having released the lands subsequently purchased by D? Give reasons for your answer.

20. When and why was the common law, which did not require a writing either to convey or to make a contract concerning lands, changed in England? Is there a similar statute in this State; if so, what are its provisions and the name by which it is generally known?

21. A verbally authorizes B to sell a tract of land. B enters into a written contract with C for the sale of the land as agent of A and signs A's name to the writing. D by a power of attorney authorizes E to sell his farm. E by a verbal contract sells it to F. Can either contract be enforced? If so, which, and why?

22. What is a remainder? Give its essential characteristics and an example of a vested and of a contingent remainder.

23. What are executory limitations and within what time must they vest? When estates are determined by executory limitations, what effect does that determination have upon curtesy and dower?

24. What is an estate of joint tenancy; of cotenancy; of coparcenary? Give the leading characteristics of each, and state which arises by act of the parties and which by the act of the law.

25. What is meant by the doctrine of survivorship, and to what extent does it still exist in this State?

26. In 1845 A conveyed a tract of land to B and his wife. In 1854 B conveys a right of way through the land to a railroad company, his wife not uniting in the deed. The railroad company at once takes possession, constructs its road, and is in possession of the right of way in the year 1897, when B dies. His widow advises with you as to her rights. State what your advice would be and reasons for it. Can she recover the right of way from the railroad company, and if so, by what action?

27. What are fixtures, and why so called?

28. What are emblements? State the doctrine as it existed at common law, and as it now exists in this State.

29. What is waste, and when may resort be had to a court of equity to prevent it?

30. What is the general issue in an action of assumpsit; in debt upon a simple contract; upon a bond; and what defences may be made under each?

31. A brings an action of debt against B with two counts in the declaration, one upon a promissory note the price of a horse; the other upon a bond, the price of a farm. B wishes to defend upon ground that the contracts were procured by

fraudulent representations as to the age and qualities of the horse and as to the location of a spring upon the farm. Under what pleas may these defences be made?

32. A devises a tract of land to B for life and at his death to his children. B has eleven children, four of whom die without issue under twenty-one years of age. One child, C, after arriving at the age of maturity settles all his property upon his wife and dies without issue before his father, who dies insolvent leaving six children and a widow surviving him. What are the rights of B's creditors, his widow, surviving children and the widow of C in the land?

33. When may the same defences be made to a negotiable instrument that can be made to one not negotiable?

34. What notes are negotiable in this State under the act of assembly approved March 3, 1898? What were negotiable prior to that time?

35. A bids off a tract of land at a judicial sale. Before confirmation of the sale he sells his bid to B at an advance price of $500. Is the contract one which a court will enforce? Give reasons for your view.

36. A loses his watch which B finds and refuses to give up. A wishes to recover the watch itself. What action should he bring?

37. Give five of the most important rules for the interpretation and construction of written instruments. State in what cases parol evidence is admissible to contradict the terms of a writing.

38. B takes out a policy of insurance payable to himself on the life of A, who owes him, to protect himself against loss, and pays the premiums on the policy until A's death. The whole of the debt and premiums remain unpaid to B. What interest, if any, has the personal representative of A in the proceeds of the policy? Give reasons for answer.

39. What contracts of an infant are valid, what voidable and what void?

40. A married woman who has no separate estate contracts debts and gives her notes therefor. She afterwards acquires separate estate. Can it be subjected to the payment of the notes? Give reasons for your view.

41. Within what time and how may a judgment by default be corrected?

42. What defences may be made to a forthcoming bond given upon a distress warrant for rent? What when it is given on a *fieri facias?*

The following are the names and addresses of those who passed the examination:

J. S. Patterson, Richmond.

Percy S. Stephenson, Norfolk.

Aubrey E. Strode, Amherst.

Gustavus B. Wallace, University of Virginia.